

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:)	
)	
KENWOOD COMMONS, LLC,)	Case No. 22-35169 (SHL)
)	
Debtor.)	
)	
Kenwood Commons, LLC, et al.,)	Adv. Pro No. 22-09028 (SHL)
)	
Plaintiffs)	
)	
v.)	
)	
Andrew Hayes,)	
)	
Defendant.)	

**DEFENDANT ANDREW HAYES' MOTION TO
WITHDRAW THE REFERENCE**

1. Pursuant to 28 U.S.C. §157(d), Fed. R. Bankr. P. 5011(a), and Local Rule 5011-1 of the United States Bankruptcy Court for the Southern District of New York (“U.S. Bankruptcy Court”), Defendant Andrew Hayes (“Hayes”) *pro se* moves the United States District Court for the Southern District of New York (“Court”) to withdraw the reference of this adversary proceeding from the U.S. Bankruptcy Court to itself.

2. As cause, Hayes would show the Court that the subject matter of the adversary proceeding is non-core within the meaning of 28 U.S.C. §157(b)(2) in the following respects: it involves two precisely-drafted dispute resolution clauses that involve matters of Delaware LLC law:

a. The first dispute resolution clause, set forth in the operating agreement of the same “SyncPark” joint venture referenced in the Adversary Complaint, has led to a determination by that joint venture that *any* dispute relating to that joint venture be arbitrated – and which states that any claims brought in contravention of that dispute resolution clause shall be dismissed *with prejudice*;

b. The second dispute resolution clause, set out in the operating agreement of Debtor’s affiliate iBuilt LLC (of which Hayes, Winter Investors LLC and Frydman himself are each parties), also requires that any claims among parties to that Operating Agreement that were not pursued in accord with the dispute resolution clause of the iBuilt LLC Operating Agreement must be dismissed *with prejudice*, both of which provision the District Court should enforce; and

3. In the event the Court determines not to enforce the arbitration clause and the mandatory dismissal clauses in the two relevant operating agreements, Hayes has counterclaims based on

a. violation of the federal RICO statute – specifically, 18 U.S.C. § 1962(a) and (b), based on Frydman’s acquisition of control over the Debtors, and his operation of the Debtors, through a pattern of tax fraud and wage theft that he actually boasted about to prospective investors, and which he carried out through a pattern of years of fraudulent tax returns that claimed personal expenses as legitimate business expenses, fraudulently

over-stated the valuation of various assets, and other instances of tax fraud that were effectuated through the federal mail and wires;

- i. Violation of the Securities Act of 1933 (the same securities fraud claims already filed by other members of iBuilt LLC against Frydman in other district courts), and other federal non-bankruptcy statutes, including
- ii. violations of the Consumer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, based on Frydman's hacking of email accounts belonging to persons who had no connection whatsoever to the SyncPark joint venture or any of Frydman's own companies, which Frydman gave to his gullible young counsel in Harrisburg, PA, to use in a bankruptcy court proceeding there, based on fraudulent assurances from Frydman himself that he actually had authority to access those emails.

WHEREFORE Hayes moves the Court to withdraw the reference of this adversary proceeding to itself for discovery and trial.

Application denied without prejudice to renewal with the Clerk of Court for the Bankruptcy Court of the Southern District of New York in accordance with Rule 5011-1 of the Local Rules of Bankruptcy Procedure.

The Clerk of Court is respectfully requested to: (i) terminate the motion sequence pending at Doc. 7; and (ii) mail a copy of this Order to Appellee Hayes.

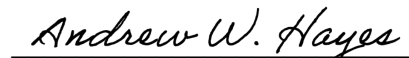
SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
February 17, 2023

Respectfully submitted,


Andrew W. Hayes, *pro se*